

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy  
and Program Coordination and Integration in  
Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING NOTICE OF INTENT TO CLAIM COMPENSATION  
OF CALIFORNIANS FOR RENEWABLE ENERGY, INC.**

This ruling denies the Notice of Intent (NOI) of Californians for Renewable Energy, Inc. (CARE) to claim intervenor compensation in this proceeding because CARE's NOI was untimely.

**Background**

On April 1, 2004, the Commission initiated this proceeding by issuing Order Instituting Rulemaking (OIR) 04-04-003. The Commission articulated several goals for this proceeding, including the development of procurement incentives, and appended a staff proposal for a procurement incentive framework for parties' consideration.<sup>1</sup>

The first prehearing conference (PHC) in this proceeding was held on April 30, 2004. At the PHC, the assigned Administrative Law Judges (ALJs), including myself, were present to discuss with respondents and interested parties the phasing of the various issues identified in the OIR. In particular,

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<sup>1</sup> OIR 04-04-003, Appendix B: "An Incentive Framework For Utility Procurement on Energy Resources Modeled After the Cap-and-Trade Principles of the Sky Trust."

parties were asked to address the merits of deferring the procurement incentives phase of this proceeding until later in 2004, or early 2005, in order to address other priority issues on a more expedited schedule.<sup>2</sup>

The Assigned Commissioner's Ruling and Scoping Memo, dated June 4, 2004 also identified procurement incentives as a major issue in this proceeding and indicated that the schedule for addressing this issue would be addressed by subsequent ruling. On November 23, 2004, in consultation with the Assigned Commissioner, I issued a ruling scheduling pre-workshop opening and reply comments and three days of public workshops on a procurement incentive framework. The ruling was sent to all parties in R.04-04-003 and R.04-01-025 and a link to the ruling and workshop information was prominently posted on the Commission's electric industry webpage.

The ruling solicited comments from respondents and interested parties on the staff proposal for an incentive framework that was attached to the OIR, and solicited alternative proposals for procurement incentive approaches for Commission consideration. Opening pre-workshop comments were due February 11, 2005 and reply comments were due by February 25, 2005. The workshops were held on March 7-9, 2005 in San Francisco, California.

### **CARE's NOI**

CARE's NOI was dated March 6, 2005, and was filed on March 14, 2005, after CARE made corrections requested by the Commission's Docket Office.<sup>3</sup> CARE also filed an accompanying Motion to Intervene Out of Time. CARE seeks

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<sup>2</sup> See PHC Reporters Transcript, pp. 13-15.

<sup>3</sup> CARE filed its NOI originally in the wrong docket, and had to refile it in this proceeding.

to intervene in this proceeding and be found eligible for an intervenor compensation award for its participation in the procurement incentive phase. CARE did not file pre-workshop comments, but representatives from CARE attended the workshops on March 7-9.

In the NOI, CARE indicates that it is a nonprofit organization that represents community interests of residential customers who reside in the affected areas of both renewable and fossil fuel energy. CARE states that its participation would effectively represent “these distinct interests of residents and members of CARE in the immediate vicinity of the Proposed Project and the community values which the Commission must consider under section 1002(a)(1) as part of its analysis of whether or not to approve the Proposed Project.”<sup>4</sup>

Independent Energy Producers Association (IEPA) filed a response opposing CARE’s NOI on March 21, 2005. With my permission, CARE filed a reply to IEPA’s response on March 24, 2005.

## **Discussion**

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy certain procedural requirements to be eligible for a compensation award. These include the timely filing of an NOI to claim compensation within 30 days of the PHC.<sup>5</sup> While the Commission has occasionally waived this requirement despite the statute’s mandatory language, it has made such exceptions only in situations where the filing was only a few days late or involved an intervenor seeking

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<sup>4</sup> NOI, p. 3.

<sup>5</sup> § 1804(a) (1).

compensation for the first time. Moreover, the Commission clearly indicated in Decision (D.) 00-03-044 that it would be reluctant to make such exceptions in the future, stating that “applicants failing to meet the NOI requirement subsequent to April 23, 1998, when D.98-04-059 was effective, would face an uphill battle in establishing eligibility for compensation.”<sup>6</sup>

CARE’s NOI was filed over 10 months after the first PHC in this proceeding. As CARE indicates in its NOI, it is not new to the Commission’s intervenor compensation procedures. CARE has successfully filed NOIs that have been approved at this Commission for at least two other major Commission proceedings, Application (A.) 02-09-043 and A.04-04-024. In addition, CARE explains that it has been an active participant in approximately a dozen dockets at the California Energy Commission, including two that have been initiated upon CARE’s complaint. Clearly, CARE is an experienced intervenor with the capability to follow the required NOI procedures in this proceeding. As IEPA points out in its response, CARE has also received the benefit of advance notice by the ALJ in A.02-09-043 of the need to file an NOI on a timely basis and reasonable opportunity to avoid future oversights in its NOI filings.<sup>7</sup>

Moreover, even though the Commission has discretion to waive the NOI requirement in some instances, CARE’s NOI does not invoke the portion of § 1804(a) that grants such discretion. The Commission may waive the deadline

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<sup>6</sup> See D.04-05-004 (pp. 4-5) and D.04-08-009 (pp. 4-5), both of which reference this language from D.00-03-044.

<sup>7</sup> IEPA Response, pp. 3-4; ALJ Ruling dated March 11, 2004 in A.02-09-043. The ALJ excused CARE’s late filing of its NOI due to CARE’s inexperience at that time in participating in Commission proceedings, but also cautioned CARE to carefully review Commission orders and follow Commission practices in the future.

where, within the 30-day NOI filing period, a party cannot reasonably be expected to identify the issues as to which it will participate, or the scope of the proceeding has subsequently changed. However, as discussed above, procurement incentives have been consistently identified as a major issue category since the issuance of the OIR. Moreover, even if CARE successfully argued that it only became aware of the issue with the ALJ's November 23, 2004 ruling—its NOI would still be over three months late.<sup>8</sup>

I note, however, that CARE's NOI is completely silent on the issue of its untimely filing. In its Motion to Intervene, CARE states that its "inadvertent failure to intervene was due to an administrative oversight," but that does not address the lateness of the NOI, as IEPA points out in its response. Moreover, the Commission has made it clear that such an excuse for lateness is not an acceptable basis to waive the 30-day NOI filing requirement. In particular, in both D.00-03-044 and D.04-08-009, the Commission rejected a similar basis for The Utility Reform Network's motion for late filing of its NOI, namely, "attorney inadvertence."<sup>9</sup>

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<sup>8</sup> In contrast, the Center for Energy Efficiency and Renewable Technologies (CEERT) filed an NOI *within 30 days* of the second PHC in this proceeding, and successfully argued that it could not have reasonably been able to identify the issues that it would be participating in before that time. See ALJ Ruling on NOI of CEERT to Claim Compensation, dated January 18, 2005 in this proceeding.

<sup>9</sup> D.04-08-009, p. 5 references this language. In its reply to IEPA's response, CARE discusses the fact that it filed its NOI on March 7, 2005 initially in the wrong docket, but that one-week delay in filing is not the issue here. Rather, as CARE should be aware from its experience at the Commission, the NOI needs to be filed within the timeframe set forth in § 1804(a)(1).

As the Commission observed in D.98-04-059, and reiterated in D.00-03-044, D.04-08-009, and D.04-05-004, the timely filing of NOIs is a statutory requirement that cannot be ignored. The Commission has also stressed that adherence to the time restrictions for filing NOIs provides several benefits. In particular, it enables the presiding officer to make a timely preliminary assessment of whether the nature and extent of the intervenor's planned participation will represent underrepresented customer interests, consistent with the scope of the proceeding.<sup>10</sup> In this instance, the timing of CARE's NOI (filed after the procurement incentive workshops had commenced) prohibited me from making such a timely assessment. Had I that opportunity, I would have questioned the nature of CARE's participation as being relevant to the scope of the procurement incentive issues being addressed in this proceeding. This is because nothing in the scoping of this proceeding in general, or in the procurement incentives phase specifically, invokes the project-specific certification considerations of § 1002, to which CARE refers in characterizing the nature of its participation.

In sum, granting CARE's request for a finding of eligibility for intervenor funding in this case would require the Commission to completely ignore the rules and the statutes governing intervenor compensation. In so doing, the Commission would either have to extend the same exception to all future parties filing NOIs or provide an unjustified preference to one party.<sup>11</sup> Neither of these

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<sup>10</sup> See D.04-05-004 (p. 5) and D.04-08-009 (p. 5).

<sup>11</sup> For example, NOIs of other intervenors have been denied on the basis of untimely filings (for reasons similar to those discussed in this ruling) in D.04-08-009, D.04-05-004 and by ALJ Ruling in R.01-08-028, dated January 27, 2004.

outcomes is acceptable. Therefore, I must find that CARE is not eligible to claim intervenor compensation for its efforts in this proceeding.

CARE's Motion to Intervene Out of Time appears to be tied directly to its request to be eligible for compensation, since the text of the motion reiterates much of the text of its NOI. In light of today's ruling, it is unclear whether CARE still desires to obtain party status and/or wishes to be added to the service list in this proceeding. If CARE still seeks to intervene in this proceeding, a representative should contact me at his or her earliest convenience and I will make arrangements to have CARE added as an appearance to the service list.<sup>12</sup> Until then, today's ruling also denies CARE's accompanying Motion to Intervene Out of Time, without prejudice.

**IT IS RULED** that:

1. The Notice of Intent of Californians for Renewable Energy, Inc. (CARE) filed on March 14, 2005 is untimely and is therefore denied.
2. The Motion to Intervene Out of Time filed by CARE on March 7, 2005 is denied, without prejudice. As discussed in this ruling, if CARE still intends to intervene in this proceeding, in light of today's ruling, a representative should contact me so I can arrange to add CARE to the service list as an appearance.

Dated March 28, 2005, at San Francisco, California.

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<sup>12</sup> CARE also has the option of writing to the Process Office directly to be placed under the "information only" category (nonparty status) of the service list in this proceeding.

/s/ MEG GOTTSTEIN by LTC

Meg Gottstein  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Notice of Intent to Claim Compensation of Californians for Renewable Energy, Inc. on all parties of record in this proceeding or their attorneys of record.

Dated March 28, 2005, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.